



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RTID 0648-XC342**

#### **Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Empire Wind Project offshore of New York**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application for regulations and Letter of Authorization; request for comments and information.

**SUMMARY:** NMFS has received a petition from Empire Offshore Wind LLC (Empire), a 50-50 partnership between Equinor and BP, requesting authorization to take small numbers of marine mammals incidental to activities associated with the Empire Wind Project in a designated lease area on the Outer Continental Shelf (OSC-A 0512) offshore of New York state over the course of 5 years beginning in 2024. Equinor will be the operator through the development, construction, and operations phase of the project. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Empire's request for the development and implementation of regulations governing the incidental taking of marine mammals and issuance of a Letter of Authorization (LOA). NMFS invites the public to provide information, suggestions, and comments on Empire's application and request.

**DATES:** Comments and information must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to [ITP.Pauline@noaa.gov](mailto:ITP.Pauline@noaa.gov).

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of Empire's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. In case of problems accessing these documents, please email the contact listed above.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review. For requests under section 101(A)(5)(A) of the MMPA, NMFS is also required to begin the public review process by publishing a notice of receipt of a request

for the implementation of regulations governing the incidental taking (50 CFR 216.104(b)(1)(ii)).

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

### **Summary of Request**

On December 7, 2021, NMFS received an application from Empire requesting authorization to take, by Level A harassment and Level B harassment, 16 species of marine mammals incidental to activities associated with the development of the Empire Wind Project offshore of New York in Commercial Lease (OCS-A-0512). In response to our comments, and following extensive information exchange with NMFS, Empire submitted a final, revised application on July 28, 2022, that we determined was adequate

and complete on August 11, 2022. Empire requests the regulations and subsequent LOA be valid for 5 years beginning in 2024.

Empire is proposing to develop the Empire Wind Project in two adjacent locations, Empire Wind 1 (EW 1) and Empire Wind 2 (EW 2), that are electrically isolated and independent from each other and will each be connected to their own points of interconnection via individual submarine export cable routes. There will be a maximum of 147 wind turbine generators (WTGs) supported by monopile foundations and two offshore substation (OSS) piled jacket foundations supported with 12 pin piles each within the Lease Area. EW 1 would consist of up to 57 WTG, and one OSS while EW 2 would consist of up to 90 WTGs and one OSS. EW 1 would require up to 116 nautical miles (nm) (214 kilometers (km)) of interarray cable and 40 nm (74 km) of submarine export cable with a cable landfall at South Brooklyn Marine Terminal (SBMT). EW 2 would consist of up to 144 nm (267 km) of interarray cable and up to 26 nm (48 km) of submarine export cable with two out of four proposed cable landfalls in Long Beach or Lido Beach, New York. Empire's Lease Area OCS-A-0512 is located approximately 12 nm (22 km) south of Long Island, New York, and 16.9 nm (31.4 km) east of Long Branch, New Jersey.

Empire considered the following activities associated with development of the wind farm in its application: installation of WTGs and OSSs using impact driving; vibratory pile driving to install and remove temporary cofferdams to support horizontal directional drilling (HDD) at the export cable landfalls of the submarine export cables; goal post installation by impact hammer to assist with the installation of casing pipes for cable landfalls; and high-resolution geophysical (HRG) equipment during survey activities in support of the Project. Empire has determined that these activities may result in the taking, by Level A harassment and/or Level B harassment, of marine mammals. Therefore, Empire requests authorization to incidentally take marine mammals.

## **Specified Activities**

In Executive Order 14008, President Biden stated that it is the policy of the United States to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

Through a competitive leasing process under 30 CFR 585.211, Empire Wind was awarded Commercial Lease OCS-A 0512 offshore of New York and the exclusive right to submit a construction and operations plan (COP) for activities within the lease area. Empire submitted a COP to the Bureau of Ocean Energy Management (BOEM) proposing the construction, operation, maintenance, and conceptual decommissioning of the Empire Wind project within Lease Area OCS-A 04512.

Empire has provided a complete description of the specified activities and their proposed mitigation, monitoring and reporting measures in their application. They have also included a description of estimated take methods and results. Empire anticipates the following activities may potentially result in harassment of marine mammals:

- up to 147 WTG monopile foundations which would not exceed 11-meters (m) in diameter would be installed using impact hammers with energy level not to exceed 5,225 kiloJoules (kJ). Impact driving would not occur from January 1 through April 30 over the course of 2 years. In addition, impact pile driving would not occur from December 1 through December 31, unless unanticipated delays due to weather or technical problems arise that necessitate extending pile driving into December;

- two OSS jacket foundations with up to 12 2.5 m (8.2 ft)-diameter pin piles would be installed over 2 years using impact hammers with energy levels not to exceed 3,200 kJ. Impact driving of pin piles would be subject to the same work window restrictions as the WTG monopile foundations;

- installation and removal of up to 5 temporary cofferdams or 6-10 goal posts would occur over 2 years via vibratory driving at the exit points of the long-distance horizontal directional drilling (HDD) at each export cable landfall. Up to 60 sheet piles would be required per cofferdam and installation and removal of each cofferdam would require 6 days;

- using HRG equipment to survey approximately 103,475 (km) over 5 years (177.792 km/day x 582 vessel days between 2024-2028).

Empire has indicated that these are the most accurate estimates for the durations of each planned activity, but that the schedule may shift over the course of the Project due to weather, mechanical, or other related delays.

### **Information Solicited**

Interested persons may submit information, suggestions, and comments concerning Empire's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Empire, if appropriate.

Dated: September 6, 2022.

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Catherine Marzin,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

